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MARGER JOHNSON & MCCOLLOM, P.C.  
210 SW MORRISON STREET, SUITE 400  
PORTLAND, OR 97204

EXAMINER

JACOBS, LASHONDA T

ART UNIT PAPER NUMBER

2157

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/606,790

Applicant(s)

NGUYEN ET AL.

Examiner

LaShonda T. Jacobs

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

This is a Final Office Action in response to Applicants' Amendment filed on September 5, 2006.

Claims 1, 9 and 15 have been amended. Claims 1-6 and 9-20 are presented for further examination.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 and 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackard et al (hereinafter, "Blackard", U.S. Pat. No. 5,918,020) in view of Schuster et al (hereinafter, "Schuster", 6,360,271) and in further view of Ohlsson et al (hereinafter, "Ohlsson", U.S. Pat. No. 6,452,950).

As per claim 1, Blackard discloses a server for transmitting data over a network to client having a de-jitter buffer, the server comprising:

- a regular path for transmitting data received from a source at a regular rate (col. 5, lines 26-35 and col. 9, lines 30-46); and
- a first buffer in the regular path for buffering data from the source prior to transmission to the client (col. 5, lines 26-35 and col. 9, lines 30-46);

However, Blackard does not explicitly disclose:

- a switch for selecting to transmit data from one of the regular path and the initial burst path.

Schuster discloses a system for dynamic jitter buffer management based on synchronized clocks including:

- a switch for selecting to transmit data from one of the regular path and the initial burst path (col. 3, lines 20-30, col. 5, lines 21-26, and col. 14, lines 33-67).

Given the teaching of the Schuster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Blackard by including a switch within the server to select between the path routes in order to transfer data to a client in a timely and efficient manner.

Blackard in view of Schuster discloses the invention substantially as claims discussed above.

However, Blackard in view of Schuster does not explicitly disclose:

- a burst path for transmitting data received from the source at a burst rate higher than the regular rate before playout at the client distinct from the regular path at least in part; and
- a second buffer in the burst path for buffering data from the source prior to transmission to the client, and for transmitting the buffered data to the client at the burst rate before playout at the client.

Ohlsson discloses an adaptive jitter buffering to enable a smooth data feed to an application without excessive delays comprising

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- a burst path for transmitting data received from the source at a burst rate higher than the regular rate before playout at the client distinct from the regular path at least in part (abstract, col.5, lines 53-67 and col. 7, lines 13-27) ; and
- a second buffer in the burst path for buffering data from the source prior to transmission to the client, and for transmitting the buffered data to the client at the burst rate before playout at the client (abstract, col.5, lines 53-67 and col. 7, lines 13-27).

Given the teaching of Ohlsson, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Blackard in view of Schuster by including a jitter buffer that has a variable size that releases stored packets to an application in order to enable a smooth data feed to an application with excessive delays.

As per claim 2, Blackard discloses the claimed invention substantially as claims discussed above:

However, Blackard does not explicitly disclose:

- a control unit for switching the switch.

Schuster discloses a system for dynamic jitter buffer management based on synchronized clocks including:

- a control unit for switching the switch (col. 3, lines 20-30, col. 5, lines 21-26, and col. 14, lines 33-67).

Given the teaching of the Schuster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Blackard by including a switch within the server to select between the path routes in order to transfer data to a client in a timely and efficient manner.

As per claim 3, Blackard discloses:

- a monitor that measures an amount of the data is output through the burst path (col. 5, lines 64-67 and col. 6, lines 1-20).

However, Blackard does not explicitly disclose:

- wherein the control unit switches the switch when a preset measure of the data is output through the burst path.

Schuster discloses a system for dynamic jitter buffer management based on synchronized clocks including:

- wherein the control unit switches the switch when a preset measure of the data is output through the burst path (col. 3, lines 20-30, col. 5, lines 21-26, and col. 14, lines 33-67).

Given the teaching of the Schuster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Blackard by including a switch within the server to select between the path routes in order to transfer data to a client in a timely and efficient manner.

As per claim 4, Blackard further discloses:

- a network bandwidth monitor (col. 5, lines 64-67 and col. 6, lines 1-20).

Blackard in view of Schuster discloses the invention substantially as claims discussed above.

However, Blackard in view of Schuster does not explicitly disclose:

- a controller that controls a fill level of second buffer according to the monitored bandwidth.

Ohlsson discloses an adaptive jitter buffering to enable a smooth data feed to an application without excessive delays comprising

- a controller that controls a fill level of second buffer according to the monitored bandwidth ((abstract, col.5, lines 53-67 and col. 7, lines 13-27).

Given the teaching of Ohlsson, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Blackard in view of Schuster by including a jitter buffer that has a variable size that releases stored packets to an application in order to enable a smooth data feed to an application with excessive delays.

As per claim 5, Blackard further discloses:

- a transcoder for transcoding the buffered streaming media output through the burst path (col. 5, lines 26-35 and col. 9, lines 30-46).

As per claim 6, Blackard further discloses:

- a network bandwidth monitor (col. 5, lines 64-67 and col. 6, lines 1-20); and
- transcoder for transcoding the buffered streaming media output through the burst path if the monitored bandwidth becomes less than a preset bandwidth (col. 5, lines 26-35, lines 64-67 and col. 9, lines 30-46).

As per claims 9 and 15, Blackard discloses a method for a server for retransmitting streaming media to a network comprising:

- means for receiving a first portion of the streaming media from a source along a first path (col. 5, lines 26-35 and col. 9, lines 30-46);

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- means for receiving a second portion of the streaming media from the source along a second path distinct from the first path at least in part (col. 5, lines 26-35 and col. 9, lines 30-46); and
- means for transmitting the second portion to the client on the network through the second path at a second rate lower than the first rate (col. 5, lines 26-35 and col. 9, lines 30-46).

Blackard in view of Schuster discloses the invention substantially as claims discussed above.

However, Blackard in view of Schuster does not explicitly disclose:

- means for buffering the first portion prior to transmission to a client and outputting the buffered first portion to the client through the first path at a first rate before the playout at the client;

Ohlsson discloses an adaptive jitter buffering to enable a smooth data feed to an application without excessive delays comprising

- means for buffering the first portion and outputting the buffered portion to a client on the network through the first path at a first rate before playout at the client (abstract, col.5, lines 53-67 and col. 7, lines 13-27).

Given the teaching of Ohlsson, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Blackard in view of Schuster by including a jitter buffer that has a variable size that releases stored packets to an application in order to enable a smooth data feed to an application with excessive delays.

As per claims **10** and **16**, Blackard discloses:



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- means for switching to outputting from the second path, from outputting from the first path (col. 3, lines 20-30, col. 5, lines 21-26, and col. 14, lines 33-67).

As per claims **11**, Blackard further discloses:

- means for storing the first portion (col. 3, lines 62-67, and col. 4, lines 1-13).

As per claim **17**, Blackard further discloses:

- storing the first portion in an initial burst transmit buffer (col. 3, lines 62-67, and col. 4, lines 1-13).

As per claims **12** and **18**, Blackard further discloses:

- means for monitoring a bandwidth of the network (col. 5, lines 64-67 and col. 6, lines 1-20); and
- means for controlling a size of the first portion according monitored bandwidth (col. 5, lines 64-67 and col. 6, lines 1-20).

As per claims **13** and **19**, Blackard further discloses:

- means for transcoding the first portion (col. 5, lines 26-35, lines 64-67 and col. 9, lines 30-46).

As per claims **14** and **20**, Blackard further discloses:

- means for monitoring a bandwidth of the network (col. 5, lines 64-67 and col. 6, lines 1-20); and
- means for transcoding the first portion if the monitored bandwidth becomes less than a preset bandwidth (col. 5, lines 26-35, lines 64-67 and col. 9, lines 30-46).

*Response to Arguments*

3. Applicant's arguments with respect to claims **1-6** and **9-20** have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 571-272-4004. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ltj  
November 22, 2006

LaShonda T Jacobs  
Examiner  
Art Unit 2157

  
ARIE ETIENNE  
SUPERVISORY PATENT EXAMINER  
EBC CENTER 2100